

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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|--|---|-------------------------|
| DARRELL GIST, | : | |
| | : | 4:08-cv-1866 |
| Plaintiff, | : | |
| | : | Hon. John E. Jones III |
| v. | : | |
| | : | Hon. Mildred E. Methvin |
| MR. RONNIE HOLT, Warden, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

MEMORANDUM

May 26, 2011

THE BACKGROUND OF THIS MEMORANDUM IS AS FOLLOWS:

This matter is before the Court on the Report and Recommendation (“R&R”) of Magistrate Judge Mildred E. Methvin (Doc. 21), filed on May 6, 2011, which recommends that we dismiss this action for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). The time for filing objections has lapsed without a filing by Plaintiff. Accordingly, this matter is ripe for our review.

For the reasons that follow, the R&R shall be adopted in its entirety and this action shall be dismissed.

I. STANDARD OF REVIEW

When, as here, no objections are made to a magistrate judge's report and recommendation, the district court is not statutorily required to review the report before accepting it. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). According to the Third Circuit, however, "the better practice is to afford some level of review to dispositive legal issues raised by the report." *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987). "[T]he court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; *see also Henderson*, 812 F.2d at 878-79 (stating "the failure of a party to object to a magistrate's legal conclusions may result in the loss of the right to de novo review in the district court"); *Tice v. Wilson*, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006); *Cruz v. Chater*, 990 F. Supp. 375-78 (M.D. Pa. 1998); *Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998). The Court's examination of this case amply confirms the Magistrate Judge's determinations.

II. DISCUSSION

Pro se Plaintiff Darrell Gist, a federal prisoner, filed this civil rights complaint on October 9, 2008. Plaintiff claims that he was assaulted by another inmate, who was not investigated or apprehended because the attacker was an informant, and thus protected by the Defendants. In his prayer for relief, Gist demanded \$250 million in punitive damages and a chiropractic consultation.

By Order dated November 25, 2008, we dismissed all of Plaintiff's claims except three – failure to protect, false arrest and malicious prosecution. As to the latter claims, the matter was stayed pending Gist's trial on federal criminal charges arising out of the same "assault" incident of which he complains here. In September of 2009, Gist was convicted by a jury on all of the federal criminal charges.¹ Gist was sentenced to 41 months and the conviction was affirmed on appeal. *United States v. Gist*, 382 F. Appx. 181 (3d Cir. 2010).

As noted by Magistrate Judge Methvin, Plaintiff has taken no action with respect to the instant civil suit since January 5, 2009. After this long period of inactivity, the Defendants filed a motion to dismiss on March 11, 2011, which was referred to Magistrate Judge Prince for a Report and Recommendation.² Magistrate Judge Prince issued an order requiring Plaintiff to respond to the pending motion by April 4, 2011. The order warned Gist that failure to file a response would result in automatic dismissal of his complaint. Gist has not filed a response.

Accordingly, Magistrate Judge Methvin recommends that this action be dismissed for failure to prosecute. We agree and note that the Plaintiff's failure to

¹ Evidence admitted at the trial included a video that showed Gist self-inflicting a wound on himself prior to assaulting an inmate who was standing at a urinal.

² The matter has since been inherited by Magistrate Judge Methvin following the end Magistrate Judge Prince's valuable service to this Court as a visiting Magistrate Judge.

file objections to the R&R further evidences his failure to prosecute this action.

Thus, the Defendant's motion to dismiss shall be granted. An appropriate Order shall issue.